

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 5, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Dave Gallik (D) (arrived late)
Rep. William Price (R)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB26, HB84, 1/5/01
Executive Action:None

HEARING ON HB 26

Sponsor: REP. EDITH CLARK, HD88, Sweetgrass

Proponents: Sam Murfitt, Executive Secretary Montana Board of
Horse Racing, Department of Commerce
Nancy Butler, General Counsel for State Fund
Jerry Keck, Administrator, Employee Relations
Division, Department of Labor

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 7.9}

REP. E.CLARK, HD88, Sweetgrass, said she was bringing HB26 to the committee for consideration at the request of the Board of Horse Racing and the Department of Commerce. She said the bill addresses the industry's concern of improper classification of four of the Board of Horse Racing's licensee's categories. This is for worker's compensation purposes. This is a simple bill she said. This amends Section 39-71-401, MCA and provides an immediate effective date.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 8.9}

Sam Murfitt, Montana Board of Horse Racing, submitted written testimony, **EXHIBIT**(buh03a01).

Informational Witnesses:

{Tape : 1; Side : A; Approx. Time Counter : 17.5}

Nancy Butler, General Counsel for the State Fund, representing the State Fund for the Legislature, said the State Fund is a competitive workmen's compensation insurer and provides one of three ways for employers to provide workmen's compensation coverage: Plan 1, the self-insured way, Plan 2, through a private carrier, or Plan 3, the State Fund. The State Fund has 23,000 policy holders, a significant number of which are Montana's small employers. Workers' compensation coverage is mandatory in Montana for employers she said and their role is unique in that we are the insurer of last resort meaning that regardless of size or risk any employer can receive coverage through us. In regards to HD26 she said we have had a fee-based policy with the Board of

Horse Racing for a number of years, however, if we can implement this bill we would provide payroll-based policies for those employers who have employees in the horse racing industry that are not exempted. In addition, the law provides a mechanism for employers to endorse the bond policies of those who are exempted if they should wish to cover any of those employees exempted by this bill.

Jerry Keck, Employment Relation Division, Department of Labor and Industry. EXHIBIT (buh03a02)

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 19.5}

REP. BOOKOUT-REINICKE asked **Mr. Keck** to describe the definition of a casual employee. **Mr. Keck** said a casual employee is typically someone who provides services which are not a regular course of that business. **REP. BOOKOUT-REINICKE** asked **Mr. Keck** if that definition could be applied to any business. **Mr. Keck** replied it would.

REP. LAWSON asked **Mr. Keck** if at the fairgrounds in Flathead County a horse stepped on the foot of a pony person and the person reacted and broke his back what would the be responsibility of the taxpayer. **Mr. Keck** replied that is the unanswered question. **Rep. LAWSON** asked then if the county would be more liable if HB26 passed. **Mr. Keck** replied he was not a lawyer but that was the view of the department.

REP. MATTHEWS asked **Mr. Murfitt** how horse racing was doing as an industry now in Montana. **Mr. Murfitt** replied the numbers of licenses had decreased on the last 12 years approximately 50%. He said since they went to the flat fee system in the 1980's participation by the non-residents has dropped dramatically throughout the state of Montana. He added where it has really dropped is with our Canadian neighbors due to the exchange rate costly them more in their currency combined with the added workmen's' compensation.

REP. BROWN asked **Mr. Murfitt** if all these occupations had definitions in the code books, for example, what is a "pony person." He said the board has rules which define them and was sure if the definitions needed to be added to the bill or not.

{Tape : 1; Side : B; Approx. Time Counter : 0.1}

REP. LAIBLE asked **Mr. Keck** a 3-part question: 1) how much was the flat fee, 2) look at the lawsuits for the previous year, and 3) what is to prevent an employer from hiring almost full-time people on a casual basis to eliminate workmen's' compensation

entirely. **Mr. Keck** said he could not answer the first two questions, they should be directed to **Ms. Butler**. The third question would be very difficult for us to track. We would not have a way of knowing that.

Ms. Butler stated the flat fee varies depending on whether you are a owner or a trainer, around \$100 each, and \$50 for a group, and then they also charged \$15 for each "out" at a horse race. Last year we needed \$130,000, This year we need \$167,000. We sit down with the board and work out how we can divide this among the participants and collect that much. That is how the fee-based policy works, she said. Our loss experience has been better with the fee-based policy. The problem initially was we have payroll-based policies but because of the nature we would never collect adequate premiums for the injuries we received. Consequently the payroll rate was around \$40 for \$100 of payroll and it became very expensive. That when the board asked us to help them find a way to meet the requirement for less expense. The losses last year did exceed the \$130,000 that's why it had to go to \$167,000.

REP. JUNEAU asked **Mr. Murfitt** 1) how many employees would be exempt under this bill, 2) how many injuries were received in a year and 3) asked if he had any testimony from individual employees who would be effected by this bill. **Mr. Murfitt** replied it did not effect a large number of people. Probably 15-20 exercise people and 20-25 pony people, working 1-30 days a year would be effected. He said there had been a significant drop in owner/trainers in the state, and there had not been any complaints against this bill from the people who would be effected.

REP. Galvin-HALCRO asked **Mr. Butler** if the fees were based per season or annually. **Ms. Butler** replied annually.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 8.3}

REP. E. CLARK closed saying this is a bill for small business, for the horse racing industry and for fairness for the individuals involved in the industry. She added the immediate effectiveness of the date is needed because the 2001 season starts in March.

Sponsor: REP. TRUDI SCHMIDT, HD42, Great Falls

Proponents: Connie Cramer-Caouette

Opponents: Russ Cravens, US West

Jeff Feiss, Montana Telecommunications Assn,

John Fitzpatrick, Touch America

Annie Bartos, Department of Commerce

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 9.2}

REP. TRUDI SCHMIDT, HD42, Great Falls, stated telemarketers are nuisances and are damaging to people. Bill HB84 will remedy this.

Proponents:

Connie Cramer-Caouette told the committee how one evening she received 4-5 phone calls which she would answer, hear some clicking noises, no one would answer and then she would hang up. She called her local phone company to ask what she could do and was told it was not within our state law to give out the confidential information of the caller's name. She then asked REP. SCHMIDT's help and the result was HB84 which would require local phone companies to cooperate with the Department of Commerce to investigate telemarketing violations and phone fraud.

Opponents:

{Tape : 1; Side : B; Approx. Time Counter : 17.2}

Russ Cravens said it was awkward for him to oppose something his company already did. He realized the frustration of telemarketing calls but said they already cooperated with the Department of Commerce. He pointed out that local phone companies may or may not have the numbers and information to give customers. He did not feel adding this language would help resolve the problem Ms. Cramer-Caouette experienced.

Geoff Feiss also felt awkward opposing the bill and shared Ms. Cramer-Caouette's concerns. He said these types of calls are illegal and immoral and nobody likes them. He pointed out, however, that the phone company is a conduit of messages not a producer of content. He felt the language in the bill was vague and there was no need to open the door to telephone company involvement.

John Fitzpatrick opposed the bill while sympathizing for the customer. He thought the bill was too generic and too open-ended.

He was concerned with the legal rights of handing out information. He said now the law required a subpoena to release the information.

Annie Bartos said there was a telemarketing passed last session which they had been able to implement and get recovery against a telemarketer. She said when there is ringing and no one answers it is probably a bank of phones calling and no one is available to answer. She called this an interesting proposal and said she would like to visit further with **Rep. Schmidt**.

Questions from Committee Members and Responses:

REP. GALVIN-HALCRO asked **Mr. Cravens** if he could do what was asked by the bill. **Mr. Cravens** said a Caller-ID could capture the number, or after hanging up they could assist the customer in tracking the number. **REP. GALVIN-HALCRO** asked if this required a fee. **Mr. Cravens** said yes. **REP. GALVIN-HALCRO** then asked **Ms. Cramer-Caouette** if this service was explained to her and she replied yes it was and also that she had Caller-ID and most calls show up "unavailable."

REP. MUSGROVE asked **Mr. Craven** asked if in terms of privacy the caller had more rights than the receiver. **Mr. Cravens** said nothing is foolproof but customers can block calls. The law does say a subpoena is required in order to release caller information.

REP. KEANE asked what the laws of other states' were. **Mr. Cravens** said he did not have that information but would pursue it.

REP. BOOKOUT-REINICKE asked for an clarification of the word "fully" in the bill title since it was not used in the bill. **REP. SCHMIDT** said she would seek legal advice.

Closing by Sponsor:

Rep. Schmidt thanked **MS. Cramer-Caouette** and her family for coming.

ADJOURNMENT

Adjournment: 9:15 A.M.

REP. JOE MCKENNEY, Chairman

JANE NOFSINGER, Secretary

JM/JN

EXHIBIT (buh03aad)